Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

_____✦_____

MARK R. TUGMAN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

_____✦_____

On Petition for Writ of Certiorari To The United States Court of Appeals For the Eleventh Circuit

_____✦_____

PETITION FOR WRIT OF CERTIORARI AND APPENDIX
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_____✦_____

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QUESTIONS PRESENTED FOR REVIEW

I. Did the court of appeals exceed its authority in creating, and applying as to petitioner, a mandatory procedural default rule - which bars all Eleventh Circuit panels, in all cases, criminal and civil, from considering issues not raised in the appellant's initial brief, such that all motions for leave to file a supplemental brief raising a previously unbriefed issue must be denied - where this non-discretionary rule contravenes the retroactivity principles of *Griffith v. Kentucky*, 479 U.S. 314, 07 S.Ct. 708 (1987), in relation to the applicable date of finality of the appeal; conflicts with the "ordinary prudential doctrines" approved by this Court in *United States v. Booker*, 543 U.S. __, 125 S.Ct. 738, 769 (2005); conflicts with the discretionary and prudential approach of the other circuits as to newly-raised issues; violates Fed. R. Crim. P. 52(b)'s guarantee of plain error review, and this Court's precedents underlying that rule; and undermines sound public policy arising from the mandatory availability of appellate jurisdiction?

II. Did the court of appeals err in failing to apply the "reasonableness" standard of review mandated for all Federal Sentencing Guidelines appeals by this Court's decision in *Booker*?

III. Did the court of appeals err by either refusing to apply Fed. R. Evid. 408 in this criminal case or by erroneously finding that the extensive testimony and argument about civil settlement discussions admitted in violation of Rule 408 did not constitute plain error?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The Petitioner in this case is Mark R. Tugman. The Respondent in this case is the United States of America.

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I. The court of appeals exceeded its authority in creating, and applying as to Petitioner, a mandatory procedural default rule - which bars all Eleventh Circuit panels, in all cases, criminal and civil, from considering issues not raised in the appellant's initial brief, such that all motions for leave to file a supplemental brief raising a previously unbriefed issue must be denied - where this non-discretionary rule contravenes the retroactivity principles of *Griffith v. Kentucky*, 479 U.S. 314, 107 S.C. 708 (1987); conflicts with the "ordinary prudential doctrines" approved in *United*

States v. Booker, 543 U.S. __, 125 S.Ct. 738, 769 (2005); conflicts with the discretionary and prudential approach of the other circuits as to newly-raised issues; violates Fed. R. Crim. P. 52(b)'s guarantee of plain error review, and this Court's precedents underlying that rule; and undermines sound public policy arising from the mandatory availability of appellate jurisdiction. 6

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III. The court of appeals erred by either refusing to apply Federal Rule of Evidence 408 in this criminal case or by erroneously finding that the extensive testimony introduced by and argument made by the prosecution about statements Tugman made during civil settlement negotiations in violation of Rule 408 did not constitute plain error. 22

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